

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

HARRY J. WHITMAN,

Plaintiff,

v.

WASHINGTON DEPARTMENT OF  
CORRECTIONS, ELDON VAIL,  
RONALD FRAKER, BRENT CARNEY,  
JAY A. JACKSON, and JAMIE  
CALLEY,

Defendants.

No. C11-5457 BHS/KLS

**ORDER SETTING NEW BRIEFING  
SCHEDULE**

Before the Court is the motion for summary judgment of Defendants Jamie Calley, Brent Carney, Ronald Fraker, Jay Jackson, Eldon Vail, and Washington Department of Corrections (DOC). ECF No. 60. Plaintiff Harry J. Whitman was granted extensions to respond to the motion (ECF Nos. 64 and 70) and both parties were granted leave to file excess pages. ECF No. 68. On October 24, 2012, Plaintiff filed a statement of factual issues, response, and declaration. ECF Nos. 72, 73, and 74. The next day, Defendants served Plaintiff with a *Pro Se* Prisoner Dispositive Motion Notice consistent with *Woods v. Carey*, 684 F.3d 934, 935, 940-41 (9<sup>th</sup> Cir. 2012) and in accordance with the holding of *Rand v. Rowland*, 154 F.3d 952, 962-63 (9<sup>th</sup> Cir. 1998). ECF No. 75. Defendants then filed their reply. ECF No. 81.

The Ninth Circuit Court of Appeals requires pro se prisoner-plaintiffs to be given “notice of what is required of them in order to oppose” summary judgment motions *at the time of filing* of the motions. *Woods v. Carey*, 684 F.3d 934, 935, 940–41 (9th Cir.2012) (emphasis added).

1 In their Notice to Plaintiff, Defendants explained what Plaintiff must do in order to oppose their  
2 summary judgment motion. ECF No. 75. The Court provided a similar explanation to Plaintiff  
3 in its Pretrial Scheduling Order. ECF No. 47. However, notice must be given at the time of  
4 filing the motion and Plaintiff had already filed his opposition to Defendants' motion for  
5 summary judgment before he was served with Defendants' Notice. Out of an abundance of  
6 caution, the Court finds that a new briefing schedule to allow for supplemental briefing in  
7 accordance with *Rand* is appropriate. The parties may, but are not required to, file supplemental  
8 briefs.  
9

10 Accordingly, it is **ORDERED**:

11 (1) Plaintiff may file a supplemental brief in opposition to Defendants' motion for  
12 summary judgment (ECF No. 60) **no later than February 4, 2013**, and Defendants may file a  
13 supplemental reply **no later than February 8, 2013**.  
14

15 (2) The Clerk is directed to **re-note** Defendants' motion for summary judgment (ECF  
16 No. 60) for **February 8, 2013**.

17 (3) The Clerk shall send a copy of this Order to Plaintiff and to counsel for  
18 Defendants.

19 **DATED** this 11th day of January, 2013.  
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23 Karen L. Strombom  
24 United States Magistrate Judge  
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